

40 KAR 4:010. Disbursement of asset forfeiture receipts.

RELATES TO: KRS 218A.420(4)

STATUTORY AUTHORITY: KRS 218A.420(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 218A.420(4)(b) provides that a portion of the proceeds from the sale of property forfeited under KRS Chapter 218A shall be paid to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney participating in the forfeiture. This administrative regulation establishes the procedure for payment of these moneys and the specific purposes for which these funds shall be expended.

Section 1. Definitions. (1) "Asset forfeiture moneys" means the portion of the proceeds from the sale of property forfeited under KRS Chapter 218A which is paid to the Prosecutor's Advisory Council and deposited on behalf of the Commonwealth's attorney or county attorney whose office participated in the forfeiture as provided under KRS 218A.420(4)(b).

(2) "National Code of Professional Conduct for Asset Forfeiture" means the National Code of Professional Conduct for Asset Forfeiture attached as Appendix G to the United States Department of Justice's Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement (March 1994) (GPO Ref. No. 1994-301-175/14299).

Section 2. Submission of Asset Forfeiture Moneys. (1) Asset forfeiture moneys paid to a Commonwealth's or county attorney shall be forwarded by the Commonwealth's or county attorney to the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204.

(2) Any asset forfeiture check forwarded to the Prosecutor's Advisory Council shall be accompanied by the following:

- (a) A copy of the final order of forfeiture; and
- (b) A completed "Submission of Asset Forfeiture Moneys," form.

(3) Any asset forfeiture moneys submitted to the Prosecutors Advisory Council without the foregoing shall be returned to the Commonwealth's or county attorney within two (2) weeks.

Section 3. Application. Commonwealth's attorneys or county attorneys having asset forfeiture moneys on deposit with the Prosecutors Advisory Council and entitled to expend those monies under KRS 218A.420(4)(b) shall apply in writing for payment of asset forfeiture proceeds by completing the "Application for Expenditure of Asset Forfeiture Funds," and submitting it to the Office of Attorney General, Prosecutors Advisory Council.

Section 4. Use of Asset Forfeiture Moneys. (1) All asset forfeiture moneys paid to a Commonwealth's attorney or county attorney shall be expended for legitimate law enforcement purposes, including the following purposes:

- (a) Operating expenses directly relating to protracted, extraordinary, or complex prosecution of crimes;
- (b) Payment for forensic and other scientific testing of evidence related to criminal prosecution;
- (c) The purchase of technical or computer equipment, including telecommunication systems or devices, or expertise related to criminal prosecution, provided that any usage not directly related to criminal prosecution shall be prorated and shall not be paid with any funds allocated by the Prosecutors Advisory Council;
- (d) Expenses associated with the conduct of grand jury proceedings;
- (e) Payment for continuing legal education and other training relating to criminal justice, including reimbursement for reasonable travel and lodging to attend trainings;

(f) Dues or subscriptions to newspapers, magazines, publications, and organizations providing support services to Commonwealth's and county attorneys, including but not limited to the Kentucky Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the American Prosecutors Research Institute, the Kentucky Association of Counties, the Kentucky Commonwealth's Attorneys Association, the Kentucky County Attorney's Association and the Fraternal Order of Police;

(g) De minimis expenses for refreshments furnished to employees, victims, other witnesses and visitors at the office of the Commonwealth's or County attorney, which are provided as a convenience in the exercise of the prosecution of crimes; and

(h) Programs, communications and advertising, including apparel identifying the office of the Commonwealth's or county attorney, which relates to education, crime prevention and prosecution.

(2) Asset forfeiture moneys provided pursuant to KRS 218A.420(4) shall not be used for the following expenditures:

(a) Civic memberships or charitable contributions unrelated to a legitimate law enforcement purpose;

(b) Payment for personal political advertising or other communications, including items bearing the name, likeness, or logo depicting the candidacy of any person;

(c) Payment for airfare for any class of ticket other than coach or economy;

(d) Personal loans or any payment that would bestow a personal pecuniary benefit unrelated to a legitimate law enforcement purpose;

(e) The purchase of alcoholic beverages;

(f) Expenses for interior decorating, including pictures, art, and holiday decorations unrelated to a legitimate law enforcement purpose;

(g) Expenses for private communications or gifts related birthdays, funerals, or other special events; and

(h) Expenses for personal apparel, including t-shirts, sweatshirts, hats, weather gear, or identifying buttons or badges unrelated to a legitimate law enforcement purpose.

(3) Asset forfeiture moneys shall be used in accordance with KRS 218A.420(4) and shall not be used to defray or otherwise replace the ordinary operating expenses of the Commonwealth's or county attorney to whom the moneys are paid.

(4) Consistent with the National Code of Professional Conduct for Asset Forfeiture, which is incorporated by reference, the following ethical prohibitions shall be applied to the expenditure of asset forfeiture moneys:

(a) The potential revenue from asset forfeiture moneys shall not be permitted to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of an ongoing investigation, or the due process rights of citizens; and

(b) Neither the employment nor salary of any employee of the unified prosecutorial system shall be made to depend upon either the level of seizures or the amount of asset forfeiture moneys he or she achieves.

Section 5. Property purchased with money allocated from the fund shall be deemed property of the Commonwealth of Kentucky.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Submission of Asset Forfeiture Moneys", December 2007;

(b) "Application for Expenditure of Asset Forfeiture Funds", December 2007; and

(c) "National Code of Professional Conduct for Asset Forfeiture", United States GPO 1994.

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the Prosecutors Advisory Council, Office of the Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204, Monday through Friday, 8 a.m. to 4:30 p.m. (17 Ky.R. 2917; eff. 4-25-91; 34 Ky.R. 1777; 2084; eff. 4-4-08; Crt eff. 2-25-2020.)